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No. 108

In the Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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This memorandum is filed by the Solicitor General, on behalf of the National Labor Relations Board, for the purpose of modifying the position previously taken in the Brief for the National Labor Relations Board in Opposition to the Petition for a Writ of Certiorari in the above-captioned case.

After the filing of the petition for a writ of certiorari herein and the Government's opposition thereto, the Court of Appeals for the District of Columbia Circuit on September 1, 1950, handed down its decision in *Denver Building and Construction Trades Council, et al.* v. *National Labor Relations Board,* not yet officially reported, holding that it is not an unfair labor practice

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within the meaning of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, for a labor organization to engage in, and induce or encourage all the employees on a building job to engage in, a strike or concerted refusal to perform services in the course of their employment with an object of forcing or requiring the general contractor to terminate the services of a subcontractor on the job because the subcontractor employs non-union workers. We believe that the decision of the District of Columbia Circuit in this respect is in conflict with the decision of the court below in the instant case and is also in conflict with the decision of the Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Local 74, United Brotherhood of Carpenters and Joiners of America,* pending on petition for a writ of certiorari, No. 85, this Term.[1] Because of the conflict and the importance of the question in the administration of the Act, the Government intends to petition for a writ of certiorari to review the decision of the Court of Appeals for the District of Columbia Circuit in the *Denver* case.

Under the circumstances, the Government believes that this Court should review the question as to which the conflict has arisen in the instant case as well as in the *Denver* case. For this

[1] We have also filed a memorandum in No. 85 modifying, as in this case, our position with respect to the granting of a writ of certiorari.

reason, we do not now oppose the granting of a writ of certiorari to review petitioner's question number 1, namely, "Whether the picketing in this case constituted a secondary boycott in violation of Section 8 (b) (4) (A) of the Act." As to all other questions urged in the petition, it continues to be the Government's position that certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

DAVID P. FINDLING,
Associate General Counsel.
National Labor Relations Board.

SEPTEMBER 1950.

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Supplemental Memo for the International Brotherhood of Electrical Workers

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SUPPLEMENTAL MEMORANDUM FOR THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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Petitioners having received the Supplemental Memorandum for the National Labor Relations Board, continue their prayer for the grant of their petition for a writ of certiorari on each of the questions raised in such petition.

Petitioners also desire to call to the attention of the Court the National Labor Relations Board ruling of October 6, 1950 on its jurisdiction. There

follows a quotation from the Board's release on this subject:

"The plan that emerged from the eight decisions made it clear that whenever federal jurisdiction exists under the statute and the interstate commerce clause of the Constitution, the Board will exercise jurisdiction over:

"1. Instrumentalities and channels of interstate and foreign commerce (for example, radio systems).

"2. Public utility and transit systems.

"3. Establishments which operate as integral parts of a multi-state enterprise (for example, chain stores, and branch divisions of national or interstate organizations).

"4. Enterprises which produce or handle goods destined for out-of-state shipment, or performing services outside a state, if the goods or services are valued at $25,000 a year.

"5. Enterprises which furnish services or materials necessary to the operation of enterprises falling into categories 1, 2 and 4 above, provided such goods or services are valued at $50,000 a year.

"6. Any other enterprise which has:

(a) a direct inflow of material valued at $500,000 a year; or

(b) an indirect inflow of material valued at $1,000,000 a year; or

(c) a combination inflow or outflow of goods which add up to at least a

total of '100 per cent' of the amounts required in items 4, 5, 6 (a) and (b) above.

"7. Establishments substantially affecting national defense."

Under this plan, the Board would not have accepted jurisdiction in the instant case since Langer's annual business was less than $25,000 a year (R. 248) and his out of state business was less than $8,500 (R. 61). It is true that the Board's plan on jurisdiction is based on its exercise of administrative power but it is submitted that the theories underlying legal and administrative determinations on commerce are similar since both are dependent on the exercise of practical judgment.

It should also be noted that the Board's effort to distinguish the instant case from the *Groneman* case (177 Fed. 2d 995) implies that there was a finding in the instant case that the boycott might extend beyond the local project (NLRB Br. p. 11 fn. 5). No such finding was made by the Board. Indeed, the Board dismissed the allegations in the complaint alleging similar violations with respect to other jobs (R. 298-299). Compare Board's brief in opposition in No. 86 page 9.

It is also submitted that the statutory interpretation of section 8 (b) (4) (A) necessarily involves the scope of section 8 (c) and that section 8 (c) cannot be considered without reference to the con-

stitutional question raised with respect to the First Amendment.

Respectfully submitted,

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